

AMENDED IN SENATE JUNE 10, 2014

AMENDED IN ASSEMBLY MAY 24, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1310

Introduced by Assembly Member ~~Brown Bonta~~
(~~Coauthor: Assembly Member Morrell~~)
(Principal coauthor: Assembly Member Brown)

February 22, 2013

An act to amend Section ~~14132.25~~ *14132.72* of the Welfare and Institutions Code, relating to Medi-Cal.

LEGISLATIVE COUNSEL'S DIGEST

AB 1310, as amended, ~~Brown Bonta~~. Medi-Cal: ~~pediatric subacute care; telehealth.~~

Existing law provides for the Medi-Cal program, which is administered by the State Department of Health Care Services, under which qualified low-income individuals receive health care services. The Medi-Cal program is, in part, governed and funded by federal Medicaid Program provisions. ~~Existing law requires the department to establish a subacute care program in health facilities in order to more effectively use limited Medi-Cal dollars while ensuring needed services for patients who meet subacute care criteria, as established by the department. For the purposes of the subacute care program, existing law defines pediatric subacute services as the health care services needed by a person under 21 years of age who uses a medical technology that compensates for the loss of a vital bodily function. Existing law also provides that, for the purposes of the subacute care program, medical necessity for pediatric subacute care services, as defined, shall be~~

~~substantiated in one of 5 ways. Existing law prohibits a requirement of in-person contact between a health care provider and patient under the Medi-Cal program for any service otherwise covered by the Medi-Cal program when the service is appropriately provided by telehealth, as defined. Existing law, for purposes of payment of covered treatment or services provided through telehealth, prohibits the department from limiting the type of setting where services are provided for the patient or by the health care provider.~~

~~This bill would expand the definition of pediatric subacute services to include the health care services needed by a person under 21 years of age who requires treatment for one or more active complex medical conditions or requires the administration of one or more technically complex treatments.~~

~~This bill would also provide that one of the ways that medical necessity for pediatric subacute care services shall be substantiated is by dependence on complex wound care management or the presence of a medical condition and necessity of care such that his or her health care needs may be satisfied by placement in a facility providing pediatric subacute care services, but, in the absence of access to a pediatric subacute care service, the only alternative in patient care appropriate to meet the patient's medical needs is an acute care hospital bed. The bill would also provide that medical necessity may be shown solely by dependence on total parenteral nutrition or other intravenous nutritional support, without a showing of dependence on additional treatments, and by dependence on tracheostomy care, as specified, in conjunction with dependence on tube feeding by means of a jejunostomy tube.~~

~~This bill would prohibit the department from requiring a health care provider licensed in California to be located in California as a condition of Medi-Cal provider enrollment or reimbursement for telehealth services provided to Medicare or Medicaid beneficiaries located in California at the time of service.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 14132.72 of the Welfare and Institutions
- 2 Code is amended to read:

1 14132.72. (a) For purposes of this section, the definitions in
2 subdivision (a) of Section 2290.5 of the Business and Professions
3 Code shall apply.

4 (b) It is the intent of the Legislature to recognize the practice
5 of telehealth as a legitimate means by which an individual may
6 receive health care services from a health care provider without
7 in-person contact with the provider.

8 (c) In-person contact between a health care provider and a
9 patient shall not be required under the Medi-Cal program for
10 services appropriately provided through telehealth, subject to
11 reimbursement policies adopted by the department to compensate
12 a licensed health care provider who provides health care services
13 through telehealth that are otherwise reimbursed pursuant to the
14 Medi-Cal program. Nothing in this section or the Telehealth
15 Advancement Act of 2011 (*Chapter 547 of the Statutes of 2011*)
16 shall be construed to conflict with or supersede the provisions of
17 Section 14091.3 of this code or any other existing state laws or
18 regulations related to reimbursement for services provided by a
19 noncontracted provider.

20 (d) The department shall not require a health care provider to
21 document a barrier to an in-person visit for Medi-Cal coverage of
22 services provided via telehealth.

23 *(e) Notwithstanding Section 14122 or any other law, the*
24 *department shall not require a health care provider licensed in*
25 *California to be located in California as a condition of Medi-Cal*
26 *provider enrollment or reimbursement for telehealth services*
27 *provided to Medicare or Medicaid beneficiaries located in*
28 *California at the time of service.*

29 ~~(e)~~

30 (f) For the purposes of payment for covered treatment or services
31 provided through telehealth, the department shall not limit the type
32 of setting where services are provided for the patient or by the
33 health care provider.

34 ~~(f)~~

35 (g) Nothing in this section shall be interpreted to authorize the
36 department to require the use of telehealth when the health care
37 provider has determined that it is not appropriate.

38 ~~(g)~~

39 (h) Notwithstanding Chapter 3.5 (commencing with Section
40 11340) of Part 1 of Division 3 of Title 2 of the Government Code,

1 the department may implement, interpret, and make specific this
2 section by means of all-county letters, provider bulletins, and
3 similar instructions.

4 ~~SECTION 1. Section 14132.25 of the Welfare and Institutions~~
5 ~~Code is amended to read:~~

6 ~~14132.25. (a) On or before July 1, 1983, the State Department~~
7 ~~of Health Care Services shall establish a subacute care program~~
8 ~~in health facilities in order to more effectively use the limited~~
9 ~~Medi-Cal dollars available while at the same time ensuring needed~~
10 ~~services for these patients. The subacute care program shall be~~
11 ~~available to patients in health facilities who meet subacute care~~
12 ~~criteria. Subacute care may be provided by any facility designated~~
13 ~~by the director as meeting the subacute care criteria that has an~~
14 ~~approved provider participation agreement with the department.~~

15 ~~(b) The department shall develop a rate of reimbursement for~~
16 ~~this subacute care program. Reimbursement rates shall be~~
17 ~~determined in accordance with methodology developed by the~~
18 ~~department, specified in regulation, and may include the following:~~

19 ~~(1) All-inclusive per diem rates.~~

20 ~~(2) Individual patient-specific rates according to the needs of~~
21 ~~the individual subacute care patient.~~

22 ~~(3) Other rates subject to negotiation with the health facility.~~

23 ~~(c) Reimbursement at subacute care rates, as specified in~~
24 ~~subdivision (b), shall only be implemented if funds are available~~
25 ~~for this purpose pursuant to the annual Budget Act.~~

26 ~~(d) The department may negotiate and execute an agreement~~
27 ~~with any health facility that meets the standards for providing~~
28 ~~subacute care. An agreement may be negotiated or established~~
29 ~~between the health facility and the department for subacute care~~
30 ~~based on individual patient assessment. The department shall~~
31 ~~establish level of care criteria and appropriate utilization controls~~
32 ~~for patients eligible for the subacute care program.~~

33 ~~(e) For the purposes of this section, pediatric subacute services~~
34 ~~are the health care services needed by a person under 21 years of~~
35 ~~age who uses a medical technology that compensates for the loss~~
36 ~~of a vital bodily function, requires treatment for one or more active~~
37 ~~complex medical conditions, or requires the administration of one~~
38 ~~or more technically complex treatments.~~

39 ~~(f) Medical necessity for pediatric subacute care services shall~~
40 ~~be substantiated in any one of the following ways:~~

1 ~~(1) A tracheostomy with dependence on mechanical ventilation~~
2 ~~for a minimum of six hours each day.~~

3 ~~(2) Dependence on tracheostomy care requiring suctioning at~~
4 ~~least every six hours, and room air mist or oxygen as needed, and~~
5 ~~dependence on one of the five treatment procedures listed in~~
6 ~~subparagraphs (B) to (F), inclusive:~~

7 ~~(A) Dependence on intermittent suctioning at least every eight~~
8 ~~hours and room air mist and oxygen as needed.~~

9 ~~(B) Dependence on continuous intravenous therapy, including~~
10 ~~administration of a therapeutic agent necessary for hydration or~~
11 ~~of intravenous pharmaceuticals, or intravenous pharmaceutical~~
12 ~~administration of one or more agents, via a peripheral or central~~
13 ~~line, without continuous infusion.~~

14 ~~(C) Dependence on peritoneal dialysis treatments requiring at~~
15 ~~least four exchanges every 24 hours.~~

16 ~~(D) Dependence on tube feeding by means of a nasogastric,~~
17 ~~gastrostomy, or jejunostomy tube.~~

18 ~~(E) Dependence on other medical technologies required~~
19 ~~continuously, that, in the opinion of the attending physician and~~
20 ~~the Medi-Cal consultant, require the services of a licensed~~
21 ~~registered nurse.~~

22 ~~(F) Dependence on biphasic positive airway pressure at least~~
23 ~~six hours a day, including assessment or intervention every three~~
24 ~~hours and lacking either cognitive or physical ability of the patient~~
25 ~~to protect his or her airway.~~

26 ~~(3) Dependence on total parenteral nutrition or other intravenous~~
27 ~~nutritional support.~~

28 ~~(4) Dependence on skilled nursing care in the administration of~~
29 ~~any three of the following six treatment procedures:~~

30 ~~(A) Dependence on intermittent suctioning at least every eight~~
31 ~~hours and room air mist and oxygen as needed.~~

32 ~~(B) Dependence on continuous intravenous therapy, including~~
33 ~~administration of a therapeutic agent necessary for hydration or~~
34 ~~of intravenous pharmaceuticals, or intravenous pharmaceutical~~
35 ~~administration of one or more agents, via a peripheral or central~~
36 ~~line, without continuous infusion.~~

37 ~~(C) Dependence on peritoneal dialysis treatments requiring at~~
38 ~~least four exchanges every 24 hours.~~

39 ~~(D) Dependence on tube feeding by means of a nasogastric,~~
40 ~~gastrostomy, or jejunostomy tube.~~

~~(E) Dependence on other medical technologies required continuously that in the opinion of the attending physician and the Medi-Cal consultant, require the services of a licensed registered nurse.~~

~~(F) Dependence on biphasic positive airway pressure at least six hours a day, including assessment or intervention every three hours for a patient lacking either cognitive or physical ability of the patient to protect his or her airway.~~

~~(5) Dependence on biphasic positive airway pressure or continuous positive airway pressure at least six hours a day, including assessment or intervention every three hours, for a patient lacking either cognitive or physical ability to protect his or her airway, and dependence on one of the following five treatment procedures:~~

~~(A) Dependence on intermittent suctioning at least every eight hours and room air mist and oxygen as needed.~~

~~(B) Dependence on continuous intravenous therapy, including administration of a therapeutic agent necessary for hydration or of intravenous pharmaceuticals, or intravenous pharmaceutical administration of one or more agents, via a peripheral or central line, without continuous infusion.~~

~~(C) Dependence on peritoneal dialysis treatments requiring at least four exchanges every 24 hours.~~

~~(D) Dependence on tube feeding by means of a nasogastric, gastrostomy, or jejunostomy tube.~~

~~(E) Dependence on other medical technologies required continuously that in the opinion of the attending physician and the Medi-Cal consultant, require the services of a licensed registered nurse.~~

~~(6) Dependence on complex wound care management, including daily assessment or intervention by a licensed registered nurse and daily dressing changes, wound packing, debridement, negative pressure wound therapy, or a special mattress.~~

~~(7) The patient has a medical condition and requires an intensity of medical or skilled nursing care such that his or her health care needs may be satisfied by placement in a facility providing pediatric subacute care services, but, in the absence of a facility providing pediatric subacute care services, the only other inpatient care appropriate to meet the patient's health care needs under the Medi-Cal program is in an acute care licensed hospital bed.~~

1 ~~(g) The medical necessity determination outlined in subdivision~~
2 ~~(f) is intended solely for the evaluation of a patient who is~~
3 ~~potentially eligible and meets the criteria to be transferred from~~
4 ~~an acute care setting to a subacute level of care.~~

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